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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/235,112 01/21/99 CELLIER

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HUGHES ELECTRONICS CORPORATION
PATENT DOCKET ADMINISTRATION
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EXAMINER

LOUIS JACQUES, J

ART UNIT

PAPER NUMBER

3661

DATE MAILED:

09/21/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

09/235,212

Applicant(s)

Cellier

Examiner

Jacques H. Louis-Jacques

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- 1) ☒ Responsive to communication(s) filed on 21 August 2000.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,4-11 and 13-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,4-11 and 13-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some * c) ☐ None of the CERTIFIED copies of the priority documents have been:
1. ☐ received.
2. ☐ received in Application No. (Series Code / Serial Number) _____.
3. ☐ received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. & 119(e).

Attachment(s)

- 15) ☒ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 18) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other: _____

DETAILED ACTION

Claim Objections

1. Claims 8 and 17 are objected to because of the following informalities:

In claim 8, the word "and" is missing before the last clause.

In claim 17, the use of capital letters is not proper in the middle of the claim. Appropriate correction is required.

2. The rejections are sustained and reproduced below. The reasons for maintaining the rejections are set below under the section "*Response to Amendments & Arguments*". The rejections have not been modified, but different sections or portions of the references have been referred to.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1, 4-11, 13-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Turner [5,326,054].

Turner discloses an apogee at constant time-of-day equatorial (ACE) orbit.

According to Turner, there is provided at least one service area on the earth at

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predetermined elevation angle from the horizon. One or more satellites orbiting the earth having sky track(s) when viewed from the service area. Turner further discloses at least one operating or orbit arc, wherein the one or more satellites are orbiting or operating on the at least one operating or orbiting arc. According to Turner, unlike the prior art system, such as the Russia Molniya, these satellites usually operate in orbits with eccentricities of approximately 0.7 and periods of just under twelve hours. The ACE orbit according to Turner has an eccentric of 0.23 (between 0.1 and 0.5). FIG. 11 shows an angular separation of an ACE orbit apogee from the geostationary arc as a function of ground terminal latitude. The elevation look angle from the earth location is greater than 10 degree. The orbital track (s) according to Turner has an apogee and a perigee, wherein the apogee is over the service area. Although Turner does not specifically disclose the limitations in the manner as claimed, it would have been obvious to one skilled in the art at the time of the invention to be motivated to modify the ACE orbit of Turner because such modification will provide useful and effective communications.

5. Claims 1, 4-11, 13-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Castiel et al [5,845,206].

Castiel et al discloses an elliptical satellite system, which emulates the characteristics of geosynchronous satellites. The satellite orbits a height above the earth. The satellite orbit has an apogee and a perigee, wherein the apogee is above a ground service area. Each ground station on the earth communicates with a satellite with a predetermined position of its apogee, and hence that satellite appears to the ground station to hover over the earth. Castiel et al discloses a plurality of satellites in orbits circling the earth, each satellite having an orbital and communicating with a ground station. The satellites

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orbiting in elliptical orbits having apogees and perigees and having ground tracks. The elevation angle according to Castiel et al is greater than 60 degree (80°-90°). The orbits according to Castiel have an eccentric between 0.1 and 0.5. There is provided a switch for switch between a first satellite and a second satellite (see columns 6, 10). Castiel et al does not specifically disclose the limitations as claimed. However, it would have been obvious to one skilled in the art at the time of the invention to be motivated to modify the elliptical satellite system of Castiel because such modification will improve satellite communications.

Response to Amendments & Arguments

6. The amendments along with the arguments filed therewith on August 21, 2000 have been entered and carefully considered by the examiner.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., "the inclination angles of the two orbits are different", response at page 3) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Applicant argued that Turner does not teach "orbits that are inclined, eccentric", response at page 4. The examiner disagrees.

Turner, as set forth above in the rejection and will be referred to in the reference, discloses orbits that are inclined and eccentric. In fact, even with reference^{to} the prior art, Turner discussed orbits that are inclined in the earth's equator. See column 1. As part of

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Turner's invention, the orbits are inclined and eccentric. See columns 4, 7-9. See also, column 10, lines 12-31.

Applicant also argued that although Castiel "emulates geosynchronous satellites", Castiel does not teach "geosynchronous satellites", response at page 4. The examiner agrees in part.

However, the fact that "geosynchronous satellites" are emulated is an indication that the satellites of Castiel can perform the functions of geosynchronous satellites. According to Castiel, there is provided a communications system which communicates between orbiting communications satellites and ground stations. This system allows operation in a way which is similar to geosynchronous satellites, at a fraction of the cost of geosynchronous satellites. Like geo systems, the satellite of Castiel is virtually continuously in the same location. The system also provides satellites with very high elevation angles. Maximizing the elevation angle prevents interference with existing satellites such as true geosynchronous satellites. Castiel discloses both inclined orbits and non-inclined (equatorial) orbits. Castiel also discloses eccentric satellite orbits. See for example column 10, 12-13.

As disclosed in the patents, both Castiel's and Turner's satellite systems involve two or more satellites having an inclination relative to the earth.

To the extent that the response to the applicant's arguments may have mentioned new portions of the prior art references which were not used in the prior office action, this does not constitute new a new ground of rejection. It is clear that the prior art reference is of record and has been considered entirely by applicant. See In re Boyer, 363

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F.2d 455, 458 n.2, 150 USPQ 441, 444, n.2 (CCPA 1966) and In re Bush, 296 F.2d 491, 496, 131 USPQ 263, 267 (CCPA 1961).

The mere fact that additional portions of the same reference may have been mentioned or relied upon does not constitute new ground of rejection. In re Meinhardt, 392, F.2d 273, 280, 157 USPQ 270, 275 (CCPA 1968).

For the above reasons, the rejections are sustained and this office action is made final.

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

5,867,783

Horstein et al

Feb. 1999

5,979,832

Drain

Nov. 1999

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jacques H. Louis-Jacques whose telephone number is (703) 305-9757. The examiner can normally be reached on M-Th, 8:30 AM - 5:00 PM (Eastern Time).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, William Cuchlinski can be reached on (703) 308-3873. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-8623 for regular communications and (703) 308-8623 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1111.

Jacques H. Louis-Jacques
Primary Examiner
Art Unit 3661

/jlj
September 20, 2000

Jacques Louis-Jacques
JACQUES H. LOUIS-JACQUES
PRIMARY EXAMINER